



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL**

January 17, 1975

The Honorable Leonard Prewitt
Executive Secretary
Teacher Retirement System
of Texas
1001 Trinity Street
Austin, Texas 78701

Opinion No. 498

Re: Does section 48a of article 3 of the Constitution permit the Legislature to appropriate funds to match all or a portion of the contributions made to the Teacher Retirement System in the form of deposits for out-of-state service credit?

Dear Mr. Prewitt:

You have asked whether section 48a of article 3 of the Texas Constitution permits the Legislature to appropriate funds to match all or a portion of the contributions made to the Teacher Retirement System of Texas in the form of deposits for out-of-state service credit.

Each member of the teacher retirement system is required by section 3.57 of the Texas Education Code to contribute 6% of his annual compensation to the retirement fund. However, section 3.02 of the Code defines "annual compensation" to include only the first \$25,000 that a member is paid each year. Thus, a member is not required to contribute to the fund any portion of his annual compensation in excess of \$25,000.

In addition, section 3.26(a) of the Texas Education Code provides that:

Any member of the retirement system who has been employed as a teacher in any public school system maintained in whole or in part by any other state or territory of the United States or by the United States for the children of United States citizens may purchase equivalent membership service credits under this retirement system for such teaching.

A teacher who wishes to purchase the membership credits pays deposits into the retirement fund as calculated in further provisions of section 3.26.

Section 3.58 of the Education Code provides that the state "shall contribute during each year an amount equal to the collective deposits paid by all members of the retirement system during that same year." Since the collective deposits include the deposits made under section 3.26, it is our opinion that the state is authorized under section 3.58 to contribute to the retirement fund during each year an amount equal to the deposits made in the same year by employees purchasing credit for out of state teaching under section 3.26.

However, as we stated in Attorney General Opinion H-497 (1975), the maximum amount that the state can contribute to the fund is limited by article 3, section 48a of the Texas Constitution which provides:

In addition to the powers given the Legislature under Section 48, Article III, it shall have the right to levy taxes to establish a fund to provide retirement, disability and death benefits for persons employed in the public schools, colleges and universities supported wholly or partly by the state; provided that the amount contributed by the state to such fund each year shall be equal to the aggregate amount required by law to be paid into the fund by such employees, and shall not exceed at any time six per centum (6%) of the compensation paid each such person by the state and/or school districts; . . .

The second clause of the proviso in section 48a provides that the maximum amount that the state can contribute to the fund each year is 6% of the compensation paid to participating employees. Unlike the statute (section 3.02), there is no constitutional limit on the maximum amount of salary on which matching contributions can be made by the state. Therefore, it is our opinion that in computing the maximum allowable state contribution, the total salaries of all participating employees may be used. Since some covered employees earn in excess of \$25,000 per year, it is possible that the state is not currently contributing to the maximum amount allowable under the Constitution.

We therefore answer your question that within the limits prescribed by article 3, section 48a of the Texas Constitution, the Legislature may appropriate

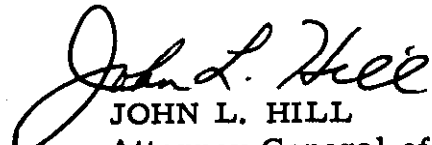
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funds to match all or a portion of the contributions made to the Teacher Retirement Fund under section 3.26 of the Texas Education Code.

S U M M A R Y


Within the limits prescribed by article 3, section 48a of the Texas Constitution, the Legislature may appropriate funds to match all or a portion of the contributions made to the Teacher Retirement Fund under section 3.26 of the Texas Education Code.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee